

## § 25.2522(c)-2

sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(e) This section applies only to gifts made before January 1, 1970. In the case of gifts made after December 31, 1969, see § 25.2522(c)-2.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7318, 39 FR 25458, July 11, 1974]

## § 25.2522(c)-2 Disallowance of charitable, etc., deductions in the case of gifts made after December 31, 1969.

(a) *Organizations subject to section 507(c) tax.* Section 508(d)(1) provides that, in the case of gifts made after December 31, 1969, a deduction which would otherwise be allowable under section 2522 for a gift to or for the use of an organization upon which the tax provided by section 507(c) has been imposed shall not be allowed if the gift is made by the donor after notification is made under section 507(a) or if the donor is a substantial contributor (as defined in section 507(d)(2)) who makes such gift in his taxable year (as defined in section 441) which includes the first day on which action is taken by such organization that culminates in the imposition of the tax under section 507(c) and any subsequent taxable year. This paragraph does not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated under section 507(g) by the Commissioner or his delegate.

(b) *Taxable private foundations, section 4947 trusts, etc.* Section 508(d)(2) provides that, in the case of gifts made after December 31, 1969, a deduction which would otherwise be allowable under section 2522 shall not be allowed if the gift is made to or for the use of—

(1) A private foundation or a trust described in section 4947(a)(2) in a taxable year of such organization for which such organization fails to meet the governing instrument requirements of section 508(e) (determined without regard to section 508(e)(2) (B) and (C)), or

(2) Any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of its failure to give notification under section 508(a) of its status to the Commissioner.

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For additional rules, see § 1.508-2(b)(1) of this chapter (Income Tax Regulations).

(c) *Foreign organizations with substantial support from foreign sources.* Section 4948(c)(4) provides that, in the case of gifts made after December 31, 1969, a deduction which would otherwise be allowable under section 2522 for a gift to or for the use of a foreign organization which has received substantially all of its support (other than gross investment income) from sources without the United States shall not be allowed if the gift is made (1) after the date on which the Commissioner has published notice that he has notified such organization that it has engaged in a prohibited transaction, or (2) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) because it has engaged in a prohibited transaction after December 31, 1969.

[T.D. 7318, 39 FR 25458, July 11, 1974]

## § 25.2522(c)-3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest.

(b) *Transfers subject to a condition or a power.* (1) If, as of the date of the gift, a transfer for charitable purposes is dependent upon the performance of some act or of the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest has passed to, or is vested in, charity on the date of the gift and the estate or interest would be defeated by the performance of some act or the happening of some event, the possibility of occurrence of which appeared on such date to be so remote as to be negligible, the deduction is allowable. If the donee or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which

would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so given by the donor, the deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of the power.

(2) The application of this paragraph may be illustrated by the following examples:

*Example (1).* In 1965, A transfers certain property in trust in which charity is to receive the income for his life. The assets placed in trust by the donor consist of stock in a corporation the fiscal policies of which are controlled by the donor and his family. The trustees of the trust and the remainderman are members of the donor's family and the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the donor's family but have no power to sell or otherwise dispose of the closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

*Example (2).* C transfers a tract of land to a city government for as long as the land is used by the city for a public park. If on the date of gift the city does plan to use the land for a public park and the possibility that the city will not use the land for a public park is so remote as to be negligible, a deduction will be allowed.

**(c) Transfers of partial interest in property—(1) Disallowance of deduction—(i)**

*In general.* If a donor transfers an interest in property after July 31, 1969, for charitable purposes and an interest in the same property is retained by the donor, or is transferred or has been transferred for private purposes after such date (for less than an adequate and full consideration in money or money's worth), no deduction is allowed under section 2522 for the value of the interest which is transferred or has been transferred for charitable purposes unless the interest in property is a deductible interest described in subparagraph (2) of this paragraph. The principles that are used in applying section 2523 and the regulations thereunder shall apply for purposes of determining under this paragraph (c)(1)(i) whether an interest in property is retained by the donor, or is transferred or has been transferred by the donor. If, however, as of the date of the gift, a

retention of any interest by a donor, or a transfer for a private purpose, is dependent upon the performance of some act or the happening of a precedent event in order that it may become effective, an interest in property will be considered retained by the donor, or transferred for a private purpose, unless the possibility of occurrence of such act or event is so remote as to be negligible. The application of this paragraph (c)(1)(i) may be illustrated by the following examples, in each of which it is assumed that the property interest which is transferred for private purposes is not transferred for an adequate and full consideration in money or money's worth:

*Example (1).* In 1973, H creates a trust which is to pay the income of the trust to W for her life, the reversionary interest in the trust being retained by H. In 1975, H gives the reversionary interest to charity, while W is still living. For purposes of this paragraph (c)(1)(i), interests in the same property have been transferred by H for charitable purposes and for private purposes.

*Example (2).* In 1973, H creates a trust which is to pay the income of the trust to W for her life and upon termination of the life estate to transfer the remainder to S. In 1975, S gives his remainder interest to charity, while W is still living. For purposes of this paragraph (c)(1)(i), interests in the same property have not been transferred by H or S for charitable purposes and for private purposes.

*Example (3).* H transfers Blackacre to A by gift, reserving the right to the rentals of Blackacre for a term of 20 years. After 4 years H transfers the right to the remaining rentals to charity. For purposes of this paragraph (c)(1)(i) the term "property" refers to Blackacre, and the right to rentals from Blackacre consist of an interest in Blackacre. An interest in Blackacre has been transferred by H for charitable purposes and for private purposes.

*Example (4).* H transfers property in trust for the benefit of A and a charity. An annuity of \$5,000 a year is to be paid to charity for 20 years. Upon termination of the 20-year term the corpus is to be distributed to A if living. However, if A should die during the 20-year term, the corpus is to be distributed to charity upon termination of the term. An interest in property has been transferred by H for charitable purposes. In addition, an interest in the same property has been transferred by H for private purposes unless the possibility that A will survive the 20-year term is so remote as to be negligible.

*Example (5).* H transfers property in trust, under the terms of which an annuity of \$5,000

a year is to be paid to charity for 20 years. Upon termination of the term, the corpus is to pass to such of A's children and their issue as A may appoint. However, if A should die during the 20-year term without exercising the power of appointment, the corpus is to be distributed to charity upon termination of the term. Since the possible appointees include private persons, an interest in the corpus of the trust is considered to have been transferred by H for private purposes.

(ii) *Works of art and copyright treated as separate properties.* For purposes of paragraphs (c)(1)(i) and (c)(2) of this section, rules similar to the rules in § 20.2055-2(e)(1)(ii) shall apply in the case of transfers made after December 31, 1981.

(2) *Deductible interests.* A deductible interest for purposes of subparagraph (1) of this paragraph is a charitable interest in property where—

(i) *Undivided portion of donor's entire interest.* The charitable interest is an undivided portion, not in trust, of the donor's entire interest in property. An undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. For example, if the donor gave a life estate in an office building to his wife for her life and retained a reversionary interest in the office building, the gift by the donor of one-half of that reversionary interest to charity while his wife is still alive will not be considered the transfer of a deductible interest; because an interest in the same property has already passed from the donor for private purposes, the reversionary interest will not be considered the donor's entire interest in the property. If, on the other hand, the donor had been given a life estate in Blackacre for the life of his wife and the donor had no other interest in Blackacre on or before the time of gift, the gift by the donor of one-half of that life estate to charity would be considered the transfer of a deductible interest; because the life estate would be considered the donor's entire interest in the property, the gift would be of an undivided portion of such entire interest. An undivided portion of a do-

nor's entire interest in property includes an interest in property whereby the charity is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, except as provided in paragraphs (c)(2)(ii), (iii), and (iv) of this section, for purposes of this subdivision a charitable contribution of an interest in property not in trust where the decedent transfers some specific rights to one party and transfers other substantial rights to another party will not be considered a contribution of a undivided portion of the decedent's entire interest in property. A gift of an open space easement in gross in perpetuity shall be considered a gift of a undivided portion of the donor's entire interest in property. A gift to charity made on or before December 17, 1980, of an open space easement in gross in perpetuity shall be considered the transfer to charity of an undivided portion of the donor's entire interest in property."

(ii) *Remainder interest in a personal residence.* The charitable interest is an irrevocable remainder interest, not in trust, in a personal residence. Thus, for example, if the donor gives to charity a remainder interest in a personal residence and retains an estate in such property for life or a term of years the value of such remainder interest is deductible under section 2522. For purposes of this subdivision, the term "personal residence" means any property which is used by the donor as his personal residence even though it is not used as his principal residence. For example, a donor's vacation home may be a personal residence for purposes of this subdivision. The term "personal residence" also includes stock owned by the donor on the date of gift as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b) (1) and (2)) if the dwelling which the donor is entitled to occupy as such stockholder is used by him as his personal residence.

(iii) *Remainder interest in a farm.* The charitable interest is an irrevocable remainder interest, not in trust, in a farm. Thus, for example, if the donor gives to charity a remainder interest in

a farm and retains an estate in such property for life or a term of years, the value of such remainder interest is deductible under section 2522. For purposes of this subdivision, the term "farm" means any land used by the donor or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.

(iv) *Qualified conservation contribution.* The charitable interest is a qualified conservation contribution. For the definition of a qualified conservation contribution, see § 1.170A-14.

(v) *Charitable remainder trust and pooled income funds.* The charitable interest is a remainder interest in a trust which is a charitable remainder annuity trust, as defined in section 664(d)(1) and § 1.664-2 of this chapter; a charitable remainder unitrust, as defined in section 664(d)(2) and (3) and § 1.664-3 of this chapter; or a pooled income fund, as defined in section 642(c)(5) and § 1.642(c)-5 of this chapter. The charitable organization to or for the use of which the remainder interest is transferred must meet the requirements of both section 2522 (a) or (b) and section 642(c)(5)(A), section 664(d)(1)(C), or section 664(d)(2)(C), whichever applies. For example, the charitable organization to which the remainder interest in a charitable remainder annuity trust is transferred may not be a foreign corporation.

(vi) *Guaranteed annuity interest.* (a) The charitable interest is a guaranteed annuity interest, whether or not such interest is in trust. For purposes of this paragraph (c)(2)(vi), the term "guaranteed annuity interest" means an irrevocable right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of the gift and can be ascertained at such date. Only one or more of the following

individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in section 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in § 20.2031-7, at the time property is transferred to the trust taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the date of gift. For example, the amount to be paid may be a stated sum for a term of years, or for the life of the donor, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index. In further illustration, the amount to be paid may be expressed as a fraction or percentage of the cost of living index on the date of gift.

(b) A charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every

respect. For example, if the charitable interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a guaranteed annuity interest.

(c) Where a charitable interest in the form of a guaranteed annuity interest is not in trust, the interest will be considered a guaranteed annuity interest only if it is to be paid by an insurance company or by an organization regularly engaged in issuing annuity contracts.

(d) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under section 2522 shall be limited to the fair market value of the guaranteed annuity interest as determined under paragraph (d)(2)(iv) of this section.

(e) Where a charitable interest in the form of a guaranteed annuity interest is in trust and the present value on the date of gift of all income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in such trust (after the payment of liabilities), the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits both the acquisition and the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired such assets. The requirement in this (e) for a prohibition in the governing instrument against the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired the assets shall not apply to a gift made on or before May 21, 1972.

(f) Where a charitable interest in the form of a guaranteed annuity interest is in trust, and the gift of such interest is made after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the

charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vi)(f), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

(g) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the guaranteed annuity interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(vii) *Unitrust interest.* (a) The charitable interest is a unitrust interest, whether or not such interest is in trust. For purposes of this paragraph (c)(2)(vii), the term "unitrust interest" means an irrevocable right pursuant to the instrument of transfer to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest. In computing the net fair market value of the property which funds the unitrust interest, all assets and liabilities shall be taken into account without regard to whether particular items are taken into account in determining the income from the property. The net fair market value of the property which funds the unitrust interest may be determined on any one date during the year or by taking the average of valuations made on more

than one date during the year, provided that the same valuation date or dates and valuation methods are used each year. Where the charitable interest is a unitrust interest to be paid by a trust and the governing instrument of the trust does not specify the valuation date or dates, the trustee shall select such date or dates and shall indicate his selection on the first return on Form 1041 which the trust is required to file. Payments under a unitrust interest may be paid for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of the gift and can be ascertained at such date. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in section 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in § 20.2031-7, at the time property is transferred to the trust taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664.

(b) A charitable interest is a unitrust interest only if it is a unitrust interest

in every respect. For example, if the charitable interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a unitrust interest.

(c) Where a charitable interest in the form of a unitrust interest is in trust, the interest will be considered a unitrust interest only if it is to be paid by an insurance company or by an organization regularly engaged in issuing interests otherwise meeting the requirements of a unitrust interest.

(d) Where a charitable interest in the form of a unitrust interest is in trust, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under section 2522 shall be limited to the fair market value of the unitrust interest as determined under paragraph (d)(2)(v) of this section.

(e) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vii)(e), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section

4947(a)(2) to segregated amounts in a split-interest trust.

(f) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the unitrust interest is in trust and for rules governing payment of private income interests by a split-interest trust, see sections 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(d) *Valuation of charitable interest*—(1) *In general.* The amount of the deduction in the case of a contribution of a partial interest in property to which this section applies is the fair market value of the partial interest on the date of gift. The fair market value of an annuity, life estate, term for years, remainder, reversion or unitrust interest is its present value.

(2) *Certain transfers after July 31, 1969.* In the case of a transfer after July 31, 1969, of an interest described in paragraph (c)(2) (v), (vi), or (vii) of this section, the present value of such interest is to be determined under the following rules:

(i) The present value of a remainder interest in a charitable remainder annuity trust is to be determined under § 1.664-2(c) of this chapter (Income Tax Regulations).

(ii) The present value of a remainder interest in a charitable remainder unitrust is to be determined under § 1.664-4 of this chapter.

(iii) The present value of a remainder interest in a pooled income fund is to be determined under § 1.642(c)-6 of this chapter.

(iv) The present value of a guaranteed annuity interest described in paragraph (c)(2)(vi) of this section is to be determined under § 25.2512-5, except that, if the annuity is issued by a company regularly engaged in the sale of annuities, the present value is to be determined under § 25.2512-6. If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under section 2522 only for the minimum amount it is evident the charity will receive.

*Example (1).* In 1975, B transfers \$20,000 in trust with the requirement that a designated

charity be paid a guaranteed annuity interest (as defined in paragraph (c)(2)(vi) of this section) of \$4,100 a year, payable annually at the end of each year for a period of 6 years and that the remainder be paid to his children. The fair market value of an annuity of \$4,100 a year for a period of 6 years is \$20,160.93 ( $\$4,100 \times 4.9173$ ), as determined under § 25.2512-5A(c). The deduction with respect to the guaranteed annuity interest will be limited to \$20,000, which is the minimum amount it is evident the charity will receive.

*Example (2).* In 1975, C transfers \$40,000 in trust with the requirement that D, an individual, and X Charity be paid simultaneously guaranteed annuity interests (as defined in paragraph (c)(2)(vi) of this section) of \$5,000 a year each, payable annually at the end of each year, for a period of 5 years and that the remainder be paid to C's children. The fair market value of two annuities of \$5,000 each a year for a period of 5 years is \$42,124 ( $[\$5,000 \times 4.2124] \times 2$ ), as determined under § 25.2512-5A(c). The trust instrument provides that in the event the trust fund is insufficient to pay both annuities in a given year, the trust fund will be evenly divided between the charitable and private annuitants. The deduction with respect to the charitable annuity will be limited to \$20,000, which is the minimum amount it is evident the charity will receive.

*Example (3).* In 1975, D transfers \$65,000 in trust with the requirement that a guaranteed annuity interest (as defined in paragraph (c)(2)(vi) of this section) of \$5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in paragraph (c)(2)(vi) of this section) of \$5,000 a year, payable annually at the end of each year, be paid to W, his wife, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is \$33,877 ( $\$5,000 \times 6.7754$ ), as determined pursuant to § 25.2512-5A(c) and by the use of factors involving one life and a term of years as published in Publication 723A (12-70). The fair market value of the charitable annuity is \$36,800.50 ( $\$5,000 \times 7.3601$ ), as determined under § 25.2512-5A(c). It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the wife and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction with respect to the charitable annuity will be limited to \$31,123 ( $\$65,000$  less  $\$33,877$  [the value of the private annuity]), which is the minimum amount it is evident the charity will receive.

(v) The present value of a unitrust interest described in paragraph (c)(2)(vii)

of this section is to be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

(3) *Other transfers.* The present value of an interest not described in paragraph (d)(2) of this section is to be determined under § 25.2512-5.

(4) *Special computations.* If the interest transferred is such that its present value is to be determined by a special computation, a request for a special factor, accompanied by a statement of the date of birth and sex of each individual the duration of whose life may affect the value of the interest, and by copies of the relevant instruments, may be submitted by the donor to the Commissioner who may, if conditions permit, supply the factor requested. If the Commissioner furnishes the factor, a copy of the letter supplying the factor must be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in this paragraph.

(e) *Effective date.* This section applies only to gifts made after July 31, 1969. In addition, the rule in paragraphs (c)(2)(vi)(a) and (vii)(a) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals applies to transfers made on or after April 4, 2000. If a transfer is made on or after April 4, 2000, that uses an individual other than one permitted in paragraphs (c)(2)(vi)(a) and (vii)(a) of this section, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming

an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587 (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402). Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to October 15th of the year following the year in which the transfer is made and must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before July 5, 2001, declares any transfer, made on or after April 4, 2000, and on or before March 6, 2001, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

[T.D. 7318, 39 FR 25458, July 11, 1974; 39 FR 26154, July 17, 1974, as amended by T.D. 7340, 40 FR 1240, Jan. 7, 1975; T.D. 7955, 49 FR 19998, May 11, 1984; T.D. 7957, 49 FR 20812, May 17, 1984; T.D. 8069, 51 FR 1507, Jan. 14, 1986; 51 FR 5323, Feb. 13, 1986; 51 FR 6319, Feb. 21, 1986; T.D. 8540, 59 FR 30103, 30177, June 10, 1994; T.D. 8630, 60 FR 63919, Dec. 13, 1995; T.D. 8923, 66 FR 1043, Jan. 5, 2001; T.D. 9068, 68 FR 40132, July 7, 2003]

**§ 25.2522(c)-4 Disallowance of double deduction in the case of qualified terminable interest property.**

No deduction is allowed under section 2522 for the transfer of an interest in property if a deduction is taken from the *total amount of gifts* with respect to that property by reason of section 2523(f). See § 25.2523(h)-1.

[T.D. 8522, 59 FR 9658, Mar. 1, 1994]

**§ 25.2522(d)-1 Additional cross references.**

(a) See section 14 of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82